



Billing Code: 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0002]

Notice of Proposed Buy America Waiver for the Cross-Connect Cabinet

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The City of Cincinnati (Cincinnati) has requested a Buy America waiver based upon non-availability for a cross-connect cabinet. The cross-connect cabinet is needed for Cincinnati Bell's utility relocation work associated with the Cincinnati Streetcar Project. This notice is to inform the public of the waiver request and to seek public comment to inform the Federal Transit Administration's (FTA) decision whether to grant the request.

DATES: Comments must be received by March 4, 2014. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2014-0002:

1. **Web site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. **Fax:** (202) 493-2251.
3. **Mail:** U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2014-0002. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or mary.j.lee@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and to seek comment on whether FTA should grant a non-availability waiver for the procurement of a cross-connect cabinet that will be used in a utility relocation performed by Cincinnati Bell. This utility relocation will be performed in connection with the Cincinnati Streetcar Project, which is an FTA-funded project.

With certain exceptions, FTA’s Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the

manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On September 30, 2013, the City of Cincinnati (Cincinnati) formally requested a non-availability waiver for the procurement of one cross-connect cabinet.¹ In its request, Cincinnati stated that the only known cross-connect cabinet that complies with Cincinnati Bell’s network specifications and service protocols is the Tyco Electronics (TE) NGXC pad mount cross-connect cabinet. At this time, deviations from the use of this particular cross-connect cabinet would result in impacts that would cascade down from the installation, maintenance, and emergency repair aspects, to operational impacts due to hardware incompatibility.

On October 17, 2013, Cincinnati alerted FTA that Cincinnati Bell had installed the cross-connect cabinet in order to comply with its scheduling demands. Unfortunately, because almost all FTA employees were furloughed during this time due to a partial government shutdown, Cincinnati was unable to consult with FTA on how to proceed.

The purpose of this notice is to publish the request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. If granted, the waiver would apply to one procurement and

¹ This request was the result of several informal communications between FTA, Cincinnati, and Cincinnati Bell to work through all of the Buy America issues. The availability of a domestic cross-connect cabinet that meets Cincinnati Bell’s specifications in order to conform to its telecommunications network is the only remaining issue.

FTA would expect that Cincinnati Bell work towards finding a domestically manufactured cross-connect cabinet that meets its network specifications for future FTA-funded projects. A full copy of the request has been placed in docket number FTA-2014-0002.

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